

authority of the Commission, the enforcement actions it may take, or the remedies it may prescribe.

### § 806.3 Definitions.

For purposes of parts 806, 807 and 808, unless the context indicates otherwise, the words listed in this section are defined as follows:

*Agricultural water use.* A water use associated primarily with the raising of food, fiber or forage crops, trees, flowers, shrubs, turf products, livestock and poultry. The term shall include aquaculture.

*Application.* A written request for action by the Commission including without limitation thereto a letter, referral by any agency of a member jurisdiction, or an official form prescribed by the Commission.

*Basin.* The area of drainage of the Susquehanna River and its tributaries into the Chesapeake Bay to the southern edge of the Pennsylvania Railroad bridge between Havre de Grace and Perryville, Maryland.

*Change of Ownership.* A change in ownership shall mean any transfer by sale or conveyance of the real or personal property comprising a project.

*Commission.* The Susquehanna River Basin Commission, as established in Article 2 of the compact, including its commissioners, officers, employees, or duly appointed agents or representatives.

*Commissioner.* Member or Alternate Member of the Susquehanna River Basin Commission as prescribed by Article 2 of the compact.

*Compact.* The Susquehanna River Basin Compact, Pub. L. 91-575; 84 Stat. 1509 *et seq.*

*Comprehensive plan.* The comprehensive plan prepared and adopted by the Commission pursuant to Articles 3 and 14 of the compact.

*Construction.* To physically initiate assemblage, installation, erection or fabrication of any facility, involving or intended for the withdrawal, conveyance, storage or consumptive use of the waters of the basin. For purposes of unconventional natural gas development projects subject to review and approval pursuant to §806.4(a)(8), initiation of construction shall be deemed to commence upon the drilling (spudding) of a

gas well, or the initiation of construction of any water impoundment or other water-related facility to serve the project, whichever comes first.

*Consumptive use.* The loss of water transferred through a manmade conveyance system or any integral part thereof (including such water that is purveyed through a public water supply or wastewater system), due to transpiration by vegetation, incorporation into products during their manufacture, evaporation, injection of water or wastewater into a subsurface formation from which it would not reasonably be available for future use in the basin, diversion from the basin, or any other process by which the water is not returned to the waters of the basin undiminished in quantity.

*Diversion.* The transfer of water into or out of the basin.

*Drilling pad site.* The area occupied by the equipment or facilities necessary for or incidental to drilling, production or plugging of one or more hydrocarbon development wells and upon which such drilling has or is intended to occur.

*Executive Director.* The chief executive officer of the Commission appointed pursuant to Article 15, Section 15.5, of the compact.

*Facility.* Any real or personal property, within or without the basin, and improvements thereof or thereon, and any and all rights of way, water, water rights, plants, structures, machinery, and equipment acquired, constructed, operated, or maintained for the beneficial use of water resources or related land uses or otherwise including, without limiting the generality of the foregoing, any and all things and appurtenances necessary, useful, or convenient for the control, collection, storage, withdrawal, diversion, release, treatment, transmission, sale, or exchange of water; or for navigation thereon, or the development and use of hydroelectric energy and power, and public recreational facilities; of the propagation of fish and wildlife; or to conserve and protect the water resources of the basin or any existing or future water supply source, or to facilitate any other uses of any of them.

*Flowback.* The return flow of water and formation fluids recovered from

the wellbore of an unconventional natural gas or hydrocarbon development well following the release of pressures induced as part of the hydraulic fracture stimulation of a target geologic formation, and until the well is placed into production.

*Formation fluids.* Fluids in a liquid or gaseous physical state, present within the pore spaces, fractures, faults, vugs, caverns, or any other spaces of formations, whether or not naturally occurring or injected therein.

*Governmental authority.* A federal or state government, or any political subdivision, public corporation, public authority, special purpose district, or agency thereof.

*Groundwater.* Water beneath the surface of the ground within a zone of saturation, whether or not flowing through known and definite channels or percolating through underground geologic formations, and regardless of whether the result of natural or artificial recharge. The term includes water contained in quarries, pits and underground mines having no significant surface water inflow, aquifers, underground water courses and other bodies of water below the surface of the earth. The term also includes a spring in which the water level is sufficiently lowered by pumping or other means of drainage to eliminate the surface flow. All other springs are considered to be surface water.

*Hydrocarbon development project.* A project undertaken for the purpose of extraction of liquid or gaseous hydrocarbons from geologic formations, including but not limited to the drilling, casing, cementing, stimulation and completion of unconventional natural gas development wells, and all other activities and facilities associated with the foregoing or with the production, maintenance, operation, closure, plugging and restoration of such wells or drilling pad sites that require water for purposes including but not limited to, re-stimulation and/or re-completion of wells, fresh water injection of production tubing, use of coiled tubing units, pumping, cement hydration, dust suppression, and hydro-seeding or other revegetation activities, until all post-plugging restoration is completed in accordance with all applicable member

jurisdiction requirements. The project includes water used for hydro-seeding or other revegetation activities, dust suppression and hydro-excavation of access roads and underground lines, as well as cleaning of tanks, related to a drilling pad site and centralized impoundments.

*Hydrocarbon water storage facility.* An engineered barrier or structure, including but not limited to tanks, pits or impoundments, constructed for the purpose of storing water, flowback or production fluids for use in hydrocarbon development.

*Member jurisdiction.* The signatory parties as defined in the compact, comprised of the States of Maryland and New York, the Commonwealth of Pennsylvania, and the United States of America.

*Member state.* The States of Maryland and New York, and the Commonwealth of Pennsylvania.

*Person.* An individual, corporation, partnership, unincorporated association, and the like and shall have no gender and the singular shall include the plural. The term shall include a governmental authority and any other entity which is recognized by law as the subject of rights and obligations.

*Pre-compact consumptive use.* The maximum average daily quantity or volume of water consumptively used over any consecutive 30-day period prior to January 23, 1971.

*Production fluids.* Water or formation fluids recovered at the wellhead of a producing hydrocarbon well as a by-product of the production activity.

*Project.* Any work, service, activity or facility undertaken, which is separately planned, financed or identified by the Commission, or any separate facility undertaken or to be undertaken by the Commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources, which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation.

*Project sponsor.* Any person who owns, operates or proposes to undertake a project. The singular shall include the plural.

*Public water supply.* A system, including facilities for collection, treatment, storage and distribution, that provides water to the public for human consumption, that:

- (1) Serves at least 15 service connections used by year-round residents of the area served by the system; or
- (2) Regularly serves at least 25 year-round residents.

*Surface water.* Water on the surface of the ground, including water in a perennial or intermittent watercourse, lake, reservoir, pond, spring, wetland, estuary, swamp or marsh, or diffused surface water, whether such body of water is natural or artificial.

*Tophole water.* Water that is brought to the surface while drilling through the strata containing fresh groundwater. Tophole water may contain drill cuttings typical of the formation being penetrated but may not be polluted or contaminated by additives, brine, oil or man induced conditions.

*Unconventional natural gas development project.* A hydrocarbon development project undertaken for the purpose of extraction of gaseous hydrocarbons from low permeability geologic formations utilizing enhanced drilling, stimulation or recovery techniques.

*Undertake.* Except for activities related to site evaluation, the initiation of construction or operation of a new or expanded project, or the operation of an existing project, that is subject to Commission review and approval.

*Water or waters of the basin.* Groundwater or surface water, or both, within the basin either before or after withdrawal.

*Water resources.* Includes all waters and related natural resources within the basin.

*Withdrawal.* A taking or removal of water from any source within the basin for use within the basin.

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#### **§ 806.4 Projects requiring review and approval.**

(a) Except for activities relating to site evaluation or those authorized under § 806.34, no person shall undertake any of the following projects

without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B and shall be subject to the applicable standards in subpart C.

(1) *Consumptive use of water.* Any consumptive use project described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.22, and, to the extent that it involves a withdrawal from groundwater or surface water, shall also be subject to the standards set forth in § 806.23. Except to the extent that they involve the diversion of the waters of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section. Provided the commission determines that low flow augmentation projects sponsored by the commission's member states provide sufficient mitigation for agricultural water use to meet the standards set forth in § 806.22, and except as otherwise provided below, agricultural water use projects shall not be subject to the requirements of this paragraph (a)(1). Notwithstanding the foregoing, an agricultural water use project involving a diversion of the waters of the basin shall be subject to such requirements unless the property, or contiguous parcels of property, upon which the agricultural water use project occurs is located at least partially within the basin.

(i) Any project initiated on or after January 23, 1971, involving a consumptive water use of an average of 20,000 gallons per day (gpd) or more in any consecutive 30-day period.

(ii) With respect to projects previously approved by the Commission for consumptive use, any project that will involve an increase in a consumptive use above that amount which was previously approved.

(iii) With respect to projects that existed prior to January 23, 1971, any project that increases its consumptive use by an average of 20,000 gpd or more